

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

U.S. TECHNOLOGY CORPORATION

PLAINTIFF/
COUNTER-DEFENDANT

VS.

CIVIL ACTION NO. 5:08-cv-218(DCB)(JMR)

PAT RAMSAY

DEFENDANT

and

DELTA LOGGING & COMPANY, INC.

DEFENDANT/
COUNTER-CLAIMANT

ORDER

This cause is before the Court on the defendants Pat Ramsay and Delta Logging & Company, Inc.'s Motion to Deny Plaintiff's Jury Demand (**docket entry 79**). Having carefully considered the motion and response, and being fully advised in the premises the Court finds as follows:

The defendants object to plaintiff's demand for jury trial as to cost recovery and contribution claims under CERCLA because such claims are equitable in nature. The defendants also object to the jury demand as to any claims which are subsumed by the plaintiff's CERCLA claims. In response, U.S. Technology does not contest that its CERCLA claims should be tried by the Court, not a jury. However, it asserts that "at least some" of its claims are legal, not equitable, in nature, specifically its state law claims involving nuisance per se and fraud. The plaintiff further asserts that some of its state law damages, specifically monetary damages for fraud, are not subsumed or preempted by CERCLA.

The Court therefore finds that the plaintiff is entitled to a jury on some, but not all, of its claims. Presently pending before the Court is the issue of whether the plaintiff can maintain a private cause of action under Mississippi's Solid Waste Disposal Law and Pollution Control Law. The Court must also determine the extent to which some of the plaintiff's claims may be subsumed or preempted by CERCLA. The Court will therefore excuse the parties from submitting jury instructions until further order of the Court. Accordingly,

IT IS HEREBY ORDERED that the defendants Pat Ramsay and Delta Logging & Company, Inc.'s Motion to Deny Plaintiff's Jury Demand **(docket entry 79)** is GRANTED IN PART AND DENIED IN PART as set forth above.

SO ORDERED, this the 10th day of June, 2011.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE